

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3213

IN THE MATTER OF:

Served August 9, 1988

Application of YOUR WAY)	Case No. AP-88-11
TRANSPORTATION, INC., for a)	
Certificate of Public Convenience)	
and Necessity -- Transportation-)	
Disadvantaged)	

By application filed April 13, 1988, Your Way Transportation, Inc. (Your Way), seeks a certificate of public convenience and necessity to transport transportation-disadvantaged persons and their attendants, together with baggage in the same vehicles as passengers, in charter and special operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver, and modified to accommodate at least two wheelchairs. */

A public hearing on the matter was held on Thursday, May 26, 1988, pursuant to Order No. 3154, served April 25, 1988, and incorporated herein by reference. At hearing the application stood uncontested. A representative of Your Way testified on applicant's behalf, and two public witnesses testified in support of the application.

With its brief, applicant filed a motion to accept into evidence as a late-filed exhibit additional financial data pertaining to resources of two of Your Way's stockholder-directors. It is applicant's position that the information contained therein is essential for a finding of financial fitness. The motion is unopposed and within the limits of timeliness. Moreover, the evidence sought to be introduced is relevant. For these reasons, the motion is granted.

SUMMARY OF EVIDENCE

Mr. Jawad Kasim, applicant's president, testified on behalf of Your Way, a Maryland corporation established March 15, 1988. Your Way's stock is equally owned by Samira Kasim, the corporation's secretary; Hadi Kasam, the corporation's treasurer; Mona M. Kasim; and the witness. Each stockholder will serve as a director of the corporation.

*/ To the extent this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) in Order No. 3154.

Mr. Jawad Kasim would be responsible for applicant's day-to-day operations; his duties would include office management, financial arrangements, marketing, "and if necessary, driving." Mr. Kasim has previously worked in the accounting department of a publishing house. He also has worked as a driver for the Barwood taxicab company for approximately one year. Along with its regular taxicab service, Barwood also offers a service similar to that for which Your Way is seeking authorization. His experience with Barwood has made him knowledgeable of the Metropolitan District. Based on his experience with Barwood, it is Mr. Kasim's opinion that there is insufficient transportation of the type he is proposing available in the Metropolitan District.

The proposed service would be unscheduled and offered by reservation only. Your Way intends to contract with schools and nursing homes to transport their patients and clients, but its service would be available to individuals as well. Your Way's initial efforts would be within Montgomery County, MD, and between Montgomery County and the District of Columbia.

Applicant proposes to conduct its operations in vehicles customized with a raised top, hydraulic lift, and wheelchair locks for two or three wheelchairs. Once so modified, the vehicles would seat three additional passengers, plus an escort and driver. Your Way intends to begin operations with two such new vehicles owned by the corporation. Your Way has discussed obtaining equipment with a local dealer. Applicant would be prepared to order equipment immediately after receiving a grant of its application. Delivery of equipment would take about three weeks; the described modifications would require an additional week to ten days. Your Way intends to maintain the vehicles by purchasing an extended warranty for five years/70,000 miles covering repairs and basic maintenance for each vehicle and its modifications. In addition, vehicles would be inspected daily upon return to the garage. The vehicles would be garaged in Gaithersburg, MD, and licensed and registered in Maryland. Mr. Kasim has been advised by an insurance agent that Your Way would be eligible for the insurance required by the Commission.

Applicant intends to begin operations with two employees; a driver and an escort. Employees would be required to have an appropriate driving permit, a good driving record, and experience with the type of transportation applicant intends to offer. Training would be given drivers and escorts on a regular basis regarding care of passengers. Although Mr. Kasim has not had any discussions with prospective employees, he knows individuals meeting the criteria. In addition, he would advertise for such individuals.

Applicant's proposed tariff lists a one-way rate of \$24 per person (\$28 with attendant) for a trip of six miles or less, plus \$1 for each additional mile thereafter. Round-trip rates of \$36 per person (\$49 with attendant) for 12 miles or less, plus \$1 for each mile thereafter, are proposed. Multi-passenger rates for groups picked up and dropped off at the same location would be charged at the rate

described for one person, plus \$7 for each additional non-ambulatory passenger and \$3 for each additional ambulatory passenger. Fixed rates would be available for hospital or nursing home admissions (\$30) and airport transportation (\$35). Additional charges would include: (1) \$18 per hour or fraction thereof waiting time; (2) \$10 cancellation charge; and (3) one hour report charge when a vehicle reports to provide service but is not used. The rate for the Montgomery County Health Department, the Prince George's County Health Department, and the Maryland State Medical Assistance Program would be a per-person rate of \$24 for the first 20 miles, plus \$.75 for each mile thereafter. Mr. Kasim testified that, although he anticipates most of Your Way's business will be transportation of a single party, multiple parties will be transported when convenient for all concerned. If two parties were transported one-way for less than six miles each would be charged \$24. On cross-examination, Mr. Kasim testified that waiting time would not be charged for the first 15 minutes of waiting. Applicant's counsel stipulated that Regulation No. 1 of Your Way's tariff which provides that, should Your Way not have sufficient equipment, vehicles of another size could be provided and would be billed at a different rate, was inappropriate to the type of operation Your Way plans to run and would be removed if this application is granted.

In response to Order No. 3154, Your Way submitted a balance sheet dated May 1, 1988, which showed total assets of \$1,000 (cash), no liabilities, and paid-in capital of \$1,000. Mr. Kasim testified that if a corporate balance sheet were constructed as of the hearing date, it would show \$2,000 in assets (cash), no liabilities, and paid-in capital of \$2,000. Mr. Kasim testified that Your Way will incur some liabilities when it purchases its vehicles and will incur other costs of starting its operations. The shareholders have discussed this matter and have agreed to contribute to the corporation in equal amounts the money needed to meet any expenses or liabilities incurred. The money will be contributed as stated capital. It is Mr. Kasim's testimony that Your Way's shareholders have the necessary funds in the form of cash to meet initial expenses including downpayments on both vehicles but do not plan to commit money to the corporation until necessary. For the first year of operations applicant projects revenues of \$89,914. This figure assumes eight trips per day at \$36 a trip. Applicant projects operating expenses for the same period will be \$53,914. This figure includes insurance, payment for two vehicles, drivers' wages, fuel, and other expenses. Net income without allowance for depreciation or taxes is projected at \$35,942, for an operating ratio of 61.

Applicant's late-filed exhibit consists of the three most recent bank statements of two of its shareholder-directors. The statements show average cash on deposit of \$57,093.55.

Mr. Kasim is familiar with the Compact and the Commission's rules and regulations as well as the safety regulations promulgated by the United States Department of Transportation, and applicant intends to comply with them.

John Robert Hudson of Gaithersburg, MD, testified on his own behalf in support of the application. Mr. Hudson is a social worker at the National Rehabilitation Hospital, Washington, DC. Formerly, Mr. Hudson was involved in a research and demonstration grant to implement and coordinate transportation for the severely handicapped in Knoxville, TN. In 1977, Mr. Hudson left the demonstration grant to work at the United States Cerebral Palsy Center, Knoxville, TN, coordinating transportation for 50 severely handicapped adults and working with that city's Metropolitan Planning Commission to implement handicapped services. Mr. Hudson has worked for the University of Tennessee Transportation Department as a consultant on "demand-response" transportation systems for the severely handicapped. In addition, Mr. Hudson has had personal experience obtaining transportation for a handicapped person.

Mr. Hudson testified that he does not consider himself handicapped or disabled except by an environment which inhibits his movement. Mr. Hudson has found Washington, DC, to be a difficult city in which to get around. The witness travels to work daily from Montgomery County, MD, to Washington, DC. He takes Montgomery County Paratransit to a Metrorail stop and, after traveling by Metrorail, he takes a bus to his final destination. Mr. Hudson had to wait two months before he could be transported by Montgomery County's fixed-route system on a regular basis. He continues to have difficulty with the Metrobus system in that often it is inaccessible either because lifts do not operate, the bus driver is unaware of how to operate the lift, or the bus simply does not arrive. As a result, Mr. Hudson has had ". . . a lot of difficulty and a lot of freezing days waiting for [scheduled] transportation." Suitably equipped, unscheduled service requires at least two and as much as 24-hour advance notice. Thus, all transportation must be carefully planned. This causes difficulty with business commitments, social occasions, and personal errands. Mr. Hudson has been using Barwood's service with Mr. Kasim as a driver since August. He finds Mr. Kasim to be a cautious driver, meticulous in his use of wheelchair locks, and conscious of Mr. Hudson's needs in entering and exiting the vehicle. Mr. Hudson is familiar with the type of service Your Way proposes to conduct. If Your Way's application is granted, Mr. Hudson anticipates that he would use it two to three times a week for business and pleasure purposes throughout the Metropolitan District, although principally in Montgomery County, MD, and the District of Columbia.

On cross-examination Mr. Hudson testified that, although he was not authorized to speak on behalf of the National Rehabilitation Hospital, his employment there involves arranging transportation for about six persons a week as they are discharged from the hospital and providing hospital outpatients with a list of available transportation providers in the area, both public and private. If this application is granted, Your Way would be added to that list.

Pauline M. Atwell of Rockville, MD, testified in support of the application on her own behalf. Ms. Atwell has used the services of Barwood for handicapped individuals with Mr. Kasim as a driver and

found the service to be excellent. She has encouraged him in his efforts to set up a similar service because it is her opinion Mr. Kasim would operate a good service of great help to those who need it. It is her opinion that more such services are needed. If this application is granted Ms. Atwell will use Your Way's service for visits to health care facilities in Montgomery County, MD, approximately three times a month.

DISCUSSION AND CONCLUSIONS

Title II, Article XII, Section 4(b) of the Compact provides

. . . the Commission shall issue a certificate . . . , if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity

Based on a review of the record, we find applicant fit, willing and able to perform the proposed service and to conform to the Compact and the Commission's rules, regulations, and requirements thereunder. Your Way's president and operations manager has experience with transportation of handicapped persons within the Metropolitan District and is both familiar with the Compact and the Commission's rules and regulations and willing to comply with them. Basic operations issues requisite to providing the proposed service have been investigated and arrangements made pending receipt of operating authority. Applicant's equipment will be new, specially equipped for safe loading and unloading of wheelchairs and securing of wheelchairs in transit. Provisions will be made for adequate maintenance and repair of the vehicles and for their daily inspection. Your Way's drivers will be experienced, and Your Way plans on-going training for both drivers and escorts.

Applicant is a newly-formed corporation with minimal capitalization. Applicant's projection of \$89,856 in annual revenues is reasonable. The projected expenses of \$53,914, producing an operating ratio of 61 is, however, somewhat unrealistic. Applying a more realistic operating ratio of 94, applicant's expenses would be \$84,465. The additional expenses would embrace salary consideration for management, salary for additional drivers and attendants, and depreciation. In this posture, applicant would generate pre-tax profit of \$5,391, after allowance for equipment expense on an annual basis of \$24,261. Based on this calculation, it is clear that applicant's operations would generate profit and sustain the proposed operations. Although applicant's capitalization of \$2,000 at the time of hearing would not provide sufficient working capital, we are persuaded by the testimony of applicant's president that additional capital will be made available to applicant from stockholders. Applicant's additional

late-filed evidence showing stockholders' available funds in excess of \$57,000 establishes to our satisfaction that applicant will have sufficient funds available to it to make the initial capital investment necessary to institute the operations and provide the service proposed. We conclude that applicant is financially fit to provide the proposed service.

We further find that the public convenience and necessity require the proposed operations in part. The proposed operation is designed to meet the transportation needs of transportation-disadvantaged persons. Transportation-disadvantaged persons are those individuals who by reason of age or physical or mental disabilities are unable without special planning or design to utilize transportation facilities and services as effectively as persons who are not so affected. See Order No. 2015, served August 7, 1979. The record indicates that existing services available to such persons require prearrangement significantly in advance. Applicant proposes to provide service on a call and demand basis. Applicant's public witnesses would use Your Way's service themselves on a regular basis. In addition, one of the witnesses is in a position to add -- and would add -- Your Way to a list, distributed for informational purposes, of carriers providing service of the type proposed if this application is granted. Inasmuch as this application is unopposed, we infer no existing carrier would be materially affected by a grant of authority to Your Way.

In its application Your Way seeks authorization for both charter and special operations. We have carefully examined the record and we find that applicant has presented no evidence of a need for charter operations. All of the service for which any need was shown can be conducted pursuant to special operations authority.

There is some confusion by applicant concerning the nature of charter and special operations. Applicant apparently believes that if it transports one person the trip is charter, and that if it transports two or more persons the trip is special. Applicant states as follows:

In this proposal where Applicant provides a vehicle for the exclusive use of one transportation-disadvantaged person from a point to another point within the Metropolitan District, the transportation would be in the nature of a charter operation. On the other hand, it is clear that if Applicant accepts two or three appointments at approximately the same time, and picks up two or three persons destined to the same or different place, that such transportation is in the nature of special operations inasmuch as no one has contracted for the exclusive use of the vehicle for the duration of the entire trip Applicant must be granted both special and charter operations in order to provide a complete service to the utilizing transportation-disadvantaged public. [Applicant's Brief, at 7-8.]

This is simply not the case. There is no reason to dub a trip "charter" simply because only one passenger has been booked. In fact, charter is characterized by an affinity group which, pursuant to a single contract, acquires the exclusive use of a vehicle; a group rate applies regardless of the number of persons in the chartering group. Special operations are characterized by point-to-point service at per-capita rates. There is no question that the evidence on this record pertains to special operations, and applicant has no need of charter authority to conduct the operations for which it has presented evidence. Accordingly, in the absence of evidence showing a public need for the proposed charter operations, that portion of the application must be denied. On the other hand, the evidence clearly warrants authorization of the proposed service in special operations.

We direct that applicant's proposed tariff be revised, including the equipment provision as discussed above, so as to be consistent with the Compact, Commission Regulation Nos. 55 and 69, and the operating authority granted by this order. We further direct that WMATC Tariff No. 1 state that waiting time is charged beginning 15 minutes after the actual report time or the requested report time, whichever is later.

THEREFORE, IT IS ORDERED:

1. That Your Way Transportation, Inc., is conditionally granted authority, contingent upon compliance with the terms of this order, to transport transportation-disadvantaged persons, together with baggage in the same vehicle as passengers, in special operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver, and further restricted against transportation solely within the Commonwealth of Virginia.

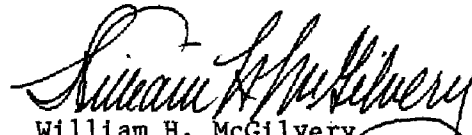
2. That in all other respects the application of Your Way Transportation, Inc., is hereby denied.

3. That Your Way Transportation, Inc., is hereby directed to file the following: (1) two copies of its WMATC Tariff No. 1, amended to reflect changes directed by this order; (2) an equipment list specifying make, model, serial number, vehicle identification number, and license plate number for each vehicle to be used in WMATC operations; (3) a certificate of insurance in accordance with Regulation No. 62; (4) an affidavit of identification of vehicles pursuant to Regulation No. 67, for which purpose WMATC No. 142 is hereby assigned; (5) applicant's business address and business telephone number within the Metropolitan District; and (6) a statement of financial condition as of 30 days from the date of this order.

4. That unless Your Way Transportation, Inc., complies with the requirements of the preceding paragraph within 45 days from the service date of this order, or such additional time as the Commission

may grant or allow, the grant of authority contained herein shall be void in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director